

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)
	) MB Docket No. 16-357
Entercom License, LLC	) Facility ID No. 65483
Applications for Renewal of License for Station	) File Nos. BRH-20050728AUU
KDND(FM), Sacramento, California	) and BRH-20130730ANM

To: Chief Administrative Law Judge

**REPLY TO  
ENTERCOM LICENSE LLC'S OPPOSITION TO  
PETITION TO ENLARGE ISSUES  
*[URGENT: EXPEDITED ACTION REQUIRED]***

Media Action Center and Sue Wilson, by their attorney, here reply to the Opposition submitted by the Entercom License LLC ("Entercom") on January 19, 2017.<sup>1</sup> Our petition sought issues against Entercom's five other stations in its Sacramento cluster,<sup>2</sup> stations where the group-wide lapses of oversight and control were manifest. We do not agree with Entercom that our underlying petition is based on the same facts and issues already considered and ruled on by the Commission. Rather we present new facts and arguments that place the findings already made in their proper context. *The issues are not moot if, during the statutory period for reconsideration, the presiding judge stays the effect of the January 18 renewal grants for these stations, pending the outcome here.* Petitioners request such a stay.

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<sup>1</sup> We have previously submitted a reply to the tag-team Opposition of the Enforcement Bureau.

<sup>2</sup> KUDL (FM) , Facility ID 57889; KIFM (AM), Facility ID 67848; KKDO (FM), Facility ID 6810; KRXQ (FM) Facility ID 20354; KSEG (FM), Facility ID11281

Entercom claims that the presiding judge, either as such or as the trial judge for this hearing, lacks any authority to exercise jurisdiction over renewal applications. But the applicant in the KDND renewal already is before the judge here, and the licensee is fully represented, on closely intertwined issues.<sup>3</sup> We are parties with the right to petition to enlarge issues, that right clearly exists (Sec. 1.229 of the Commission's Rules and Regulations (47 C.F.R. Sec. 1.229)) and we have timely and properly exercised it.

### **The Judge Has Authority to Designate Additional Renewals for Hearing.**

Entercom (Opp., p. 3) attempts to set up a contrast between the judge's delegated authority under Section 0.151 and 0.341 of the Rules (47 C.F.R. Secs. 0.151 and 0.341) and the authority of the Media Bureau to “[p]rocess applications. . .” Sec. 0.61(a). No case law authority is given for this claim, and the distinction is specious. In a recent case, the Enforcement Bureau petitioned the same judge to add issues, as to whether FM radio construction permits granted by the Broadcast Bureau in the 1980's should be nullified, because their grant was inconsistent with the holding of subsequently evolved case law. The petition was granted and the issues added.<sup>4</sup> If the judge has power, as averred by the Enforcement Bureau and as the judge concluded, to go back into the processing line thirty years later and overturn the issuance of

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<sup>3</sup> The renewals of the other five stations had lay dormant in pending status since the applications were filed in July, 2013, and indeed three of the stations also had previous renewals still pending from July, 2005, more than a decade ago. Now with the connivance of the Enforcement Bureau all are suddenly resolved, *In re: Entercom Sacramento Licenses, LLC*, Letter (M.B.), released on January 18, 2017.

<sup>4</sup> William L. Zawila, FCC 16M-01, released on January 12, 2016.

construction permits, then here the judge certainly has power to stay the effect of these renewals, until the critical relevant issues, as raised by petitioners, are addressed.

**Issues Should be Added as to the Other Five Stations Because the Violations cited in the HDO Flowed From a Cluster-Wide Nucleus of Misconduct.**

We show that at the jury trial in Sacramento Superior Court, the Special Verdict, Attachment D, found Entercom Communications Corp. not negligent (Question 3). It found that Entercom Sacramento Entercom was negligent (Question 2). The jury was not asked, and did not opine as to whether Station KDND was negligent. Entercom Sacramento is a legal entity. KDND is not.

While it is relevant as stated in our petition that all stations in the cluster used the same offices, the same computerized public file (Attachment A), and the same lunch room where Jennifer Strange was fatally injured (Attachment B), our claims centrally relied on the admissions in the Declaration of John D. Geary in support of motion for summary judgment, Attachment C. The Declaration clearly indicates that he and Robin Pechota Ray were the only executives in Entercom Sacramento having responsibilities for programs or contests across the station cluster.

An issue already designated is whether Entercom failed to properly train and supervise the Station KDND (FM) staff and the contest to ensure the safety of the contestants. The Geary Declaration pinpoints the exact locus of those failures with devastating precision.

I did not see the rules for the Contest that were prepared by Robin Pechota Ray (Depo Ex. 9) until after I learned of the death of Ms. Strange. Also, as Vice President and Market Manager of Entercom Sacramento, LLC, I was not involved in the training of employees (including the promotions directors) in the General Contest Guidelines or in the procedures to be followed in connection with contests. (p. 5, ll. 20-24).

Robin Pechota Ray had responsibility for overseeing the planning and approval of contests, including the Hold Your Wee for a Wii Contest, for preparing rules for contests, for monitoring contests and for complying with the General Contest Guidelines. (4 at ll. 17-19)

I was advised by Robin Ray after the hold your Wee for a Wii Contest occurred that she did not provide rules for the Contest or submit the Contest to the Legal Department for review; hence no employee (or officer, director or a managing agent) of Entercom Communications Corp. had any involvement with the contest. (4 at 20-22).

These sworn admissions of the good soldier may have been effective at trial to insulate the parent company back in Pennsylvania. But they also locate the vacuum of oversight and control that must concern the Commission here, where it actually was in the cluster management.<sup>5</sup>

We have submitted probative evidence that the jury's verdict was soundly based on the known fact of an oversight failure in the offices of the only two people at Entercom Sacramento charged with promotions, contests, and other FCC compliance matters. Here the HDO put it this way:

The Trial jury's verdict that Entercom negligently caused the death of a member of the Station listening audience appears to be prima facie evidence that Entercom's conduct was contrary to the public interest duty and a breach of Entercom's core obligations as a public trustee. (HDO at para. 33)

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<sup>5</sup> And see Decl. At 2 ll. 26 to 3 ll. 1-3, confirming that defendants Steve Weed, Robin Pechota Ray and Elizabeth Baghaei were employees, not of Entercom, but of Entercom Sacramento, LLC.

But the HDO had generally accepted Entercom's misleading claim “that, at the Trial, licensee parent Entercom was not found negligent by the jury.” HDO, para. 13.

“According to Entercom, 'the matter ended there.’” *Id.* Issues are needed to set aside this deception, and to place responsibility where the jury placed it and where the vacuum of oversight and control occurred in actual fact – at the Entercom Sacramento radio cluster management level.

It is the factual nexus that draws in the other five stations. Accordingly, the issues will properly be added, even assuming that Section 309(k) of the Communications Act bars misconduct at one station being considered in the renewal of another, 47 U.S.C. Sec. 309(k).<sup>6</sup> The derelictions of the licensee – absence of oversight and control – were joint and several across the Sacramento cluster, *as the jury concluded.*

### **Entercom's Opposition Presents No Credible Argument Against the Addition of a Character Issue.**

Petitioner's original filings sought basic qualifying character issues against Entercom. As the Opposition recognizes, these were rejected in a brief footnote, HDO fn. 122 cited in Opp. P. 4 and fn. 13. They quote the decision: “The limited scope of our review of renewal applications under the Act does not include

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<sup>6</sup> We believe our approach to Section 309(k), analyzed in details in the Petition, is not essential to the addition of issues across the cluster. Since the petition was filed, we discovered an isolated case where the Commission had interpreted the section adversely to our position, *Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551 (2003). We are obligated to cite that case to the tribunal, and the presiding judge will have no choice but to follow it. We continue to believe that the self-abnegating gloss on the statute is wrong, in literal fact and in legislative history, but our position ultimately will need to be decided, not here, but at the Court of Appeal.

consideration of questions of character that do not involve serious violations of the Act or Rules.” Opp. p. 4. But how do we fathom that a documented and thorough collapse of FCC oversight and control across the entire Sacramento cluster was not “serious,” even as it led at one station to a negligent fatality? The Commission's action, by failing to consider the special verdict judgment against Entercom Sacramento, LLC, was factually flawed. That, taken together with the shocking and reprehensible failure to warn other contestants, HDO paras. 58 – 61, make the character issue inescapable.

Our request for a character qualification issue compliments, but stands apart from our request for issues across the full Sacramento cluster. That is, the presiding judge could decide to add renewal issues across the other five stations in the cluster, but not add the character issue. Or the judge could decide to add the character issue, while limiting it to KDND (FM). We believe the prima facie case is made to add both types of issues.

### **A Reporting Issue is Needed.**

In a reversal of the normal case where a winning party offers settlement so that judgment in its favor may become final, here Entercom paid off the family of the decedent contestant, winners of a \$16 million judgment, to close the matter and, importantly, to withdraw their complaint to the FCC based on the same conduct. Entercom claims (opp. p. 7) that the complaint was neither a petition to deny nor an

informal objection, so the payment did not trigger the reporting obligation of Sec. 73.3588 of the Rules.<sup>7</sup> EB forgets that KDND (FM) had its renewals pending at the time and the complaint, by a party with obvious standing, could of itself have led to a hearing, and would have been treated at least as an informal objection.

Entercom also presents the novel suggestion that, even assuming their payoff was within the disclosure rules, the obligation lay with Ms. Strange's family, not with themselves. Entercom is a Commission licensee, paying this hush money, and the effort to blame the victim misses the mark. Once Entercom had surrounded the matter with teams of lawyers, it could at least be asked on the record whether they advised the bereaved family of such an obligation.

### **Conclusion.**

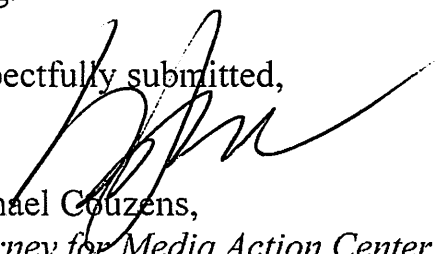
Petitioners do not believe that any licensee is too big to regulate or too big to punish, even for egregious misconduct. Only the presiding judge can uphold the public interest, where the interest on both sides of the table in this matter appear have started working as a tag team.

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<sup>7</sup> As Entercom had hoped with its pay off, the complaint is not part of the record here, and petitioners do not have a copy of it.

WHEREFORE, and for the reasons stated in our petition, it is respectfully requested that the issues sought be added in this hearing.

Respectfully submitted,



Michael Couzens,  
*Attorney for Media Action Center  
and Sue Wilson.*

**MICHAEL COUZENS LAW OFFICE**

6536 Telegraph Avenue, Suite B201  
Oakland, CA 94609

Tel. (510) 658-7654  
FAX (510) 654-6741  
[cuz@well.com](mailto:cuz@well.com)

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**CERTIFICATE OF SERVICE**

I, Michael Couzens, certify that on January 27, 2017, the foregoing Reply to Entercom's Opposition to Motion to Enlarge Issues was served by e-mail to the following:

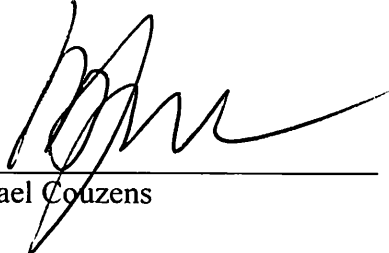
Hon. Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
[Richard.Sippel@FCC.gov](mailto:Richard.Sippel@FCC.gov)

Rachel Funk  
Attorney Advisor  
Office of Administrative Law Judges  
Federal Communications Commission  
[Rachel.Funk@fcc.gov](mailto:Rachel.Funk@fcc.gov)

Patricia Ducksworth  
Legal Technician  
Office of Administrative Law Judges  
Federal Communications Commission  
[Patricia.Ducksworth@fcc.gov](mailto:Patricia.Ducksworth@fcc.gov)

Michael Carowitz, Acting Chief  
Pamela Kane  
Michael Engel  
Enforcement Bureau  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington, D.C. 20554  
[Michael.Carowitz@fcc.gov](mailto:Michael.Carowitz@fcc.gov)

David H. Solomon  
Robert G. Kirk  
J. Wade Lindsay  
Wilkinson Barker Knauer LLP  
1800 M Street N.W., Suite 800N  
Washington, D.C. 20036  
[dsolomon@wbklaw.com](mailto:dsolomon@wbklaw.com)

  
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Michael Couzens